

ORDINANCE 2024-04

AN ORDINANCE OF THE CITY OF OLDSMAR, FLORIDA, AMENDING ARTICLE IV (CODE ENFORCEMENT BOARD) OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF OLDSMAR TO REFLECT CHANGES THAT HAVE BEEN ADOPTED IN CHAPTER 162, FLORIDA STATUTES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Attorney has reviewed the current provisions of Article IV (Code Enforcement Board) of Chapter 2 (Administration) of the Code of Ordinances for the City of Oldsmar and has recommended that certain provisions be amended to reflect changes that have been adopted in Chapter 162, Florida Statutes; and

WHEREAS, the recommendations of the City Attorney have been found meritorious by the City Council; and

WHEREAS, the City Council has received input from the public at two public hearings.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLDSMAR, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:

Section 1. That Article IV (Code Enforcement Board) of Chapter 2 (Administration) of the Code of Ordinances of the City of Oldsmar, Florida, is hereby amended and shall read as follows:

ARTICLE IV. CODE ENFORCEMENT BOARD

Sec. 2-126. Definitions.

For the purposes of this article the following words and phrases shall have the meanings respectively ascribed to them.

Board attorney. The legal counselor for the board.

City attorney. The legal counselor for the city.

City council. The legislative body of the City of Oldsmar, Florida.

Code enforcement board. The Oldsmar Code Enforcement Board created pursuant hereto.

Code inspector. Any authorized agent or employee of the city whose duty it is to assure Code compliance ~~with the codes and ordinances which are subject to this article.~~

Repeat violation. A violation of a provision of a code or ordinance by a person ~~whom the board has previously found to have violated the same provision within five years prior to the violation.~~ who has been previously found, through the Code Enforcement Board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding the violations occurred at different locations.

Sec. 2-127. Creation, membership; legislative intent.

- (a) There is hereby created within the city the Oldsmar Code Enforcement Board, which shall be composed of seven regular members and two alternate members, all of whom shall be residents of the city.
- (b) The alternate members of the board shall be designated as alternate no. 1 and alternate no. 2. If there is one regular board member absent from the code enforcement board meeting, alternate no. 1 will sit as a voting member of the board. If alternate no. 1 is not available to sit as a voting member of the board when one of the regular board members is absent, then alternate no. 2

will sit as a voting member of the board. If there are two or more regular board members absent from a board meeting, both alternates will sit as voting members of the board.

- (c) It is the legislative intent of this article to provide an additional or supplemental means of obtaining compliance with city codes and ordinances. Nothing contained in this article shall prohibit the city from enforcing its codes and ordinances by any other means provided by law.

Sec. 2-128. Function; appointments and terms of office.

- (a) The code enforcement board shall have the purpose of conducting hearings relating to the enforcement of the local business tax receipt, fire, building, zoning, sign, subdivision regulations, land development code regulations, the City Code, and other related technical codes presently in force in the city; to issue findings of fact and to issue orders affording the proper relief consistent with the powers granted by this article and in accordance with F.S. Ch. 162 (~~2007~~2024), as amended from time to time.
- (b) Appointments to the code enforcement board shall be made by the city council, in the sole discretion of the city council, and appointment of a majority of the membership shall be made on the basis of experience or interest in the fields of zoning, building, and development control. Whenever possible, the board shall include an architect, a business person, an engineer, a general contractor, a subcontractor and a realtor.

- (c) Appointments shall be for a term of three years. Members may be reappointed by the city council. Appointments to fill any vacancy of a member of the board shall be for the remainder of the unexpired term of office.
- (d) Alternate members shall serve three-year terms.

Sec. 2-129. Attendance; removal from office.

- (a) Any member of the code enforcement board who fails to attend two out of three successive meetings without cause and without prior ~~notice given to the board recording secretary,~~ approval of the chairman shall automatically forfeit that appointment, and the city council shall promptly fill such vacancy.
- (b) The members of the code enforcement board shall serve in accordance with the provisions of the Oldsmar City Charter and Code of Ordinances and may be suspended or removed without cause upon the majority vote of the city council.

Sec. 2-130. Organization; expenses.

- (a) The code enforcement board shall elect one of its members to be chairperson. The person so elected shall function as chairman for a one-year term.
- (b) Four or more members of the code enforcement board present at any meeting shall constitute a quorum in order for the code enforcement board to conduct its business.
- (c) Members of the code enforcement board shall serve without compensation but may be entitled to be reimbursed for ~~expenses such travel, mileage and~~

per diem expenses as the city council shall authorize ~~or as otherwise~~
provided by law.

(d) The city attorney shall represent the city by presenting cases before the board.

(e) The board attorney shall be counsel to the code enforcement board.

Sec. 2-131. Powers.

The code enforcement board shall have the power to:

- (1) Adopt rules for the conduct of its hearings;
- (2) Subpoena alleged violators and witnesses to its hearings. Such subpoenas shall be served by the sheriff's department;
- (3) Subpoena evidence to its hearings;
- (4) Take testimony under oath; and
- (5) Issue orders, liens, and fines which shall have the force of law in order to bring violations into compliance with this Code.

Sec. 2-132. Enforcement procedure.

(a) Except as provided in subsections (b) and (c) of this section, the code enforcement procedure under this article shall be as follows:

- (1) It shall be the duty of the code inspector to initiate enforcement proceedings ~~with respect to each code, code section or ordinance. of the various codes, however, no member of the code enforcement board shall have the power to initiate enforcement proceedings. A code inspector may not initiate enforcement proceedings for a potential violation of a code or ordinance by way of an anonymous complaint. A person who~~

reports a potential violation of a code or ordinance must provide his or her name and address to the city before an enforcement proceeding may occur. This paragraph does not apply if the code inspector has reason to believe that the violation presents an imminent threat to public health, safety or welfare or imminent destruction of habitat or sensitive resources.

- (2) Where a code inspector finds or is made aware of a code violation, he/she shall notify the violator, and such notice shall provide a reasonable time within which to correct the violation. Should the violation continue beyond the time specified in the notice, the code inspector shall notify the code enforcement board and request a hearing pursuant to section 2-133. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand-delivered or mailed as provided ~~by this article to the violator in section 2-136. At the option of the code enforcement board, notice may additionally be served by publication in a newspaper of general circulation in the county as provided in section 2-136 of this article.~~ If the violation is corrected and then recurs, or is not corrected within the time specified by the code inspector, the case may be presented to the code enforcement board. ~~E~~ even if the violation is corrected prior to the code enforcement board hearing, ~~the violation may be heard by said board.~~ The notice of hearing shall state that the case shall be presented to the board, even if the violation is corrected prior to the hearing date.

- (b) If a repeat violation is found by the code inspector, the code inspector shall notify the violator of the repeat violation and shall notify the code enforcement board and request a hearing. The code inspector need not provide the violator a reasonable time to correct the repeat violation. The code enforcement board, through its clerical staff, shall schedule a hearing and provide notice pursuant to section 2-136. The case may be presented to the code enforcement board, even if the repeat violation has been corrected prior to the code enforcement board hearing. The notice of hearing shall state that the case shall be presented to the board, even if the repeat violation is corrected prior to the hearing date.
- (c) If the code inspector has reason to believe a violation ~~of or~~ the condition causing the violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the code enforcement board and request a hearing.
- (d) If the owner of property that is subject to an enforcement proceeding before the code enforcement board transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:
- (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the code inspector of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Sec. 2-133. Hearing procedure.

- (a) Upon the request of the code inspector or at such other times as may be necessary, the chairperson of the code enforcement board may call a hearing. Hearings may also be called by a written notice signed by at least three members of the code enforcement board.
- (b) The board shall attempt to convene at least once every month, but may convene more often as the case demand dictates.
- (c) Minutes shall be kept of all hearings held by the code enforcement board and all hearings shall be open to the public.

- (d) The city council shall provide clerical and administrative personnel as may be required to assist the board in the proper performance of its duties.
- (e) Each case before the code enforcement board shall be presented by the city attorney or a member of the city staff. If the city prevails in prosecuting the case before the code enforcement board, it shall be entitled to recover all costs incurred in prosecuting the case before the code enforcement board and such costs may be included in the lien authorized under section 2-134(c).
- (f) All testimony shall be under oath and shall be recorded. The code enforcement board shall take testimony from the code inspector and the alleged violator and may take testimony from any other person having knowledge about the case. The code enforcement board shall not be bound by formal rules of evidence; however, it shall act to ensure fundamental due process in each of its cases.
- (g) At the conclusion of each hearing, the code enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and its order shall provide relief consistent with the powers granted the board herein. ~~Each~~ The finding shall be approved by motion of a majority of those members present and voting, except that, for an action to be official, at least four members of the code enforcement board must vote. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in section 2-134, the costs of repairs may be included along with the fine. A certified copy of that

order may be recorded in the public records of Pinellas County, Florida and shall constitute notice to any subsequent purchasers, successors in interest or assigns and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the code enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

Sec. 2-134. Fines, liens and foreclosure.

- (a) Upon being notified by the code inspector that an order issued by the code enforcement board has not been complied with within the time established in such order, or upon finding that a repeat violation has been committed, the code enforcement board may order the violator to pay a fine to the city, not to exceed \$250.00 per day that the violation continues past the compliance date established in its order, or, in the case of a repeat violation, the code enforcement board may order the violator to pay a fine, not to exceed \$500.00 per day for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. If a finding of a first violation or a repeat violation has been made by the code enforcement board, a hearing shall not be necessary for issuance of the order imposing the fine.

In addition, if the violation is a violation described in section 2-132(c), the code enforcement board shall notify the city, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city for any damages to the property if such repairs were completed in good faith. Any fine imposed pursuant to this section may include all such costs of repairs.

If, after due notice and hearing, the code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine not to exceed \$5,000.00 per violation.

- (b) In determining the amount of the fine, the code enforcement board shall consider the following factors:
- (1) The gravity of the violation;
 - (2) Any actions taken by the violator to correct the violation; and
 - (3) Any previous violations committed by the violator.
- (c) A certified copy of an order imposing a fine or a fine plus repair costs may be recorded in the public records of Pinellas County, Florida, and thereafter such order shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including execution

and levy against the personal property of the violator, but shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this article shall continue to accrue until the violator comes into compliance or until a judgment is rendered in a suit to foreclose on a lien filed pursuant to this article, whichever occurs first.

~~Upon a finding by the board that a violation existed, an automatic \$35.00 fine shall be imposed. No such fine will be imposed if a finding of no violation is made by the board. Such fine shall be due and payable even if the violator complies with the applicable code prior to the board hearing on the matter, or if such compliance occurs subsequent to an order of the board being issued. In order to do justice, the board may waive such fine.~~ Such fine shall become a lien and a charge against the real or personal property of the violator as provided by this article, and as otherwise provided by law. No affirmative action by the board shall be necessary to impose such a fine upon a finding that a violation has occurred.

- (d) The code enforcement board may reduce a fine imposed pursuant to this article. The city council may, pursuant to its general legislative authority, reduce a fine imposed pursuant to this article.
- (e) After three months from the filing of any lien which remains unpaid, the code enforcement board may authorize the city attorney to foreclose on such lien in the manner provided by statute for the foreclosure of other municipal liens or sue to recover a money judgment for the amount of the lien plus accrued interest. Such foreclosure may be commenced by the city attorney upon

authority for such foreclosure being granted by the city council. No lien created pursuant to the provisions of this article may be foreclosed on real property which is a homestead under Article X, Section 4 of the State Constitution. The money judgment provisions of this subparagraph shall not apply to the real property or personal property which is covered under Article X, Section 4, of the State Constitution.

- (f) No lien provided under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure.
- (g) A lien arising from a fine imposed pursuant to this section runs in favor of the city and the city may execute a satisfaction or release of lien entered pursuant to this section.
- (h) The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien.

Sec. 2-135. Appeals.

Any aggrieved party, including the city, may appeal a ~~ruling or final administrative~~ order of the code enforcement board to the circuit court of the county in accordance with F.S. § 162.11 (~~2020~~2024). Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the code enforcement

board. The appeal provided for herein shall be filed within 30 days of the execution of the order to be appealed.

Sec. 2-136. Notices.

- (a) All notices required to be provided by this ~~chapter article~~ shall be by certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the Pinellas County Property Appraiser's database, by hand delivery by the sheriff's department, code inspector or other person designated by the city council, or by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing that person of the contents of the notice.
- (b) In addition to providing notice as set forth in subsection (a), at the option of the board or the city, notice may also be served by publication or posting as follows:
 - (1) Such notice shall be published in print in a newspaper or on a public accessible website as provided in F.S. 50.0311 for four consecutive weeks. If published in print, the notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper ~~of general circulation~~ in Pinellas County, Florida. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50, for legal and official advertisements.
 - (2) Proof of publication shall be made as provided for in F.S. §§ 50.041 and 50.051.

(3) In lieu of publication as described in subsection (b)(1) of this section, such notice may be posted for at least ten days prior to the hearing or prior to the expiration of any deadline contained in the notice in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other which shall be at the city hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a) of this section. Evidence that an attempt has been made to hand-deliver or mail notice as provided in subsection (a) of this section, together with proof of publication as provided in subsection (b) of this section, shall be sufficient to show that the notice requirements of this chapter have been met, without regard to whether or not the alleged violator actually received the notice.

Sec. 2-137. Supplemental enforcement procedures in county court.

(a) The following powers and procedure for supplemental enforcement are hereby authorized by this section.

(1) The city council may designate certain of its employees or agents as code inspectors. The training and qualifications of the employees or agents for such designation shall be determined by the city council. The employees or agents who may be designated as code inspectors may

include, but are not limited to, law enforcement officers, animal control officers, building code inspectors, water department employees, or fire safety inspectors. Designation as a code inspector does not provide the code inspector with the power of arrest or subject the code inspector to the provisions of F.S. §§ 943.085—943.255. Nothing in this section amends, alters or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

- (2) A code inspector is authorized to issue a citation to a person when, based upon personal investigation, the inspector has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge. The citation will be filed and heard in the county court.

(3) A code enforcement officer may not initiate an investigation of a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the city before an investigation may occur. This paragraph does not apply if the code inspector has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

- ~~(3)~~(4) Prior to issuing a citation, the code inspector shall provide notice to the person that the person has committed a violation of a code or

ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If upon personal investigation, a code inspector finds that the person has not corrected the violation within the time period, a code inspector may issue a citation to the person who has committed the violation. A code inspector does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code inspector has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible.

(4)(5) A citation issued by a code inspector shall be in a form prescribed by the city and shall contain:

- a. The date and time of issuance.
- b. The name and address of the person to whom the citation is issued.
- c. The date and time the civil infraction was committed.
- d. The facts constituting reasonable cause.
- e. The number or section of the code or ordinance violated.
- f. The name and authority of the code inspector.
- g. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.

- h. The applicable civil penalty if the person elects to contest the citation.
- i. The applicable civil penalty if the person elects not to contest the citation.
- j. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he shall be deemed to have waived his right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum amount of civil penalty.

~~(5)~~(6) After issuing a citation to an alleged violation, a code inspector shall deposit the original citation and one copy of the citation with the county court.

~~(6)~~(7) Any person who willfully refuses to sign and accept a citation issued by a code inspector shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

~~(7)~~(8) The provisions of this section shall not apply to the enforcement pursuant to F.S. §§ 553.79 and 553.80 of building codes adopted pursuant to F.S. § 553.73 as they apply to construction, provided that a building permit is either not required or has been issued by the city. For the purposes of this subsection, "building codes" means only those codes adopted pursuant to F.S. § 553.73.

~~(8)~~(9) The violation of a city code or ordinance subject to the provisions of this article shall be a civil infraction and shall be prosecuted in the county court in the same manner as misdemeanors are prosecuted. The jurisdiction of the county court is provided by F.S. § 34.01.

~~(9)~~(10) Findings of violations may subject the violator to a maximum fine of \$500.00. Uncontested violations may result in a lower fine, in the discretion of the court.

~~(10)~~(11) Any person charged with a violation of an ordinance in county court may appear and contest the citation, and if found to be in violation, may appeal such finding as provided in Florida Rules of Civil Procedure.

~~(11)~~(12) The county court may assess costs, service charges and attorneys fees in addition to any fine levied.

Section 2. For purposes of codification of any existing section of the Oldsmar Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. Ordinances or parts of ordinances in conflict herewith to the extent that such conflict exists are hereby repealed.

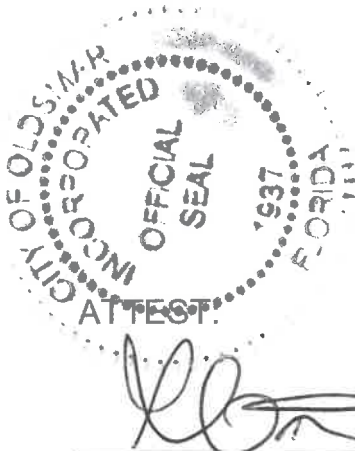
Section 4. In the event a court of competent jurisdiction finds any part or provision of the Ordinance unconstitutional or unenforceable as a matter of law, the same shall be stricken and the remainder of the Ordinance shall continue in full force and effect.


Section 5. The Codifier shall codify the substantive amendments to the Code of Ordinances of the City of Oldsmar contained in Section 1 of this Ordinance as provided for herein and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 6. This Ordinance shall become effective immediately upon its final passage and adoption.

PASSED ON FIRST READING: April 2, 2024.

PASSED ON SECOND READING AND ADOPTED: April 16, 2024.






Daniel M. Saracki, Mayor
City of Oldsmar



Kristin Garcia, CMC
City Clerk
City of Oldsmar

APPROVED AS TO FORM:



Thomas J. Trask, B.C.S.
City Attorney
City of Oldsmar